



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION ON

EMERGENT RELIEF

OAL DKT. NO. EDS 12311-19

AGENCY DKT. NO. 2020-30636

R.T. ON BEHALF OF S.C.,

Petitioner,

v.

TRENTON PUBLIC SCHOOL DISTRICT

BOARD OF EDUCATION,

Respondent.

R.T. on behalf of S.C., petitioner pro se

Elesia James, Assistant General Counsel, for respondent

BEFORE **JOSEPH A. ASCIONE,** ALJ:

STATEMENT OF THE CASE

In this matter, petitioner brings an action for emergent relief against the Trenton Public School District Board of Education (respondent) to: Continue the placement of her daughter, S.C., as a student eligible for special education pending the outcome of the due process hearing. The matter was filed in the Office of Special Education Programs on September 4, 2019, then transmitted to the Office of Administrative Law (OAL) on September 6, 2019, as a contested case. The matter was heard on September 10, 2019, at the Trenton OAL offices in Mercerville.

BACKGROUND

Petitioner, S.C., aged five years, nine months, is an incoming kindergarten student. In school year ending June 2019, she was evaluated and placed in the general population, after having been placed in a pre-school disabled (PSD) class due to communication issues during the pre-school years of 2016, 2017 and 2018. The testing prior to the placement with the general population, did reflect average or high average in most areas, however some weakness appeared in the letter—word identification. The average to high average testing prompted the Child Study Team to approve the general education placement on June 3, 2019. The parent did not agree to this placement; however, she did not file for due process until September 4, 2019. The remainder of the pre-school during June 2019 occurred in the general population.

An initial review of the petition reflects petitioner's position; S.C. suffers from autism, this is not documented medically, nor would that diagnosis alone qualify for special education benefits. The Board is provided great deference in its determination of placement. A parent's right to seek emergent relief is available to a parent, however the parent must meet substantial evidentiary tests to qualify for relief. Regretfully, the parent has not presently shown the necessary elements to be successful on an emergent application.

FACTUAL FINDINGS

Based on the evidence submitted by the petitioners, I cannot conclude that the actions of the respondent in de-classifying S.C. and placing her in the general population is arbitrary, capricious, without a rational basis, or induced by improper motives.

At this point, all that is contained in the record of petitioner's case is the petitioner's argument the Child Study Team de-classified and mis-placed S.C.

I **FIND** there is simply not enough objective evidence in the record before me upon which I can base a finding that S.C.'s initial placement in the general population will result in an irreparable injury; that petitioner's rights are well settled; that petitioner would be

successful in prevailing on the merits of the underlying claim; and that the balancing of the interest favors S.C.

I **FIND** under the totality of the circumstances, Trenton's actions are not arbitrary, capricious, or induced by improper motives.

I **FIND** the June 3, 2019, determination of de-classification should have resulted in a due process petition prior to the close of the school year. The failure to so file, makes the general population the "stay-put" placement for S.C. at this time.

I **FIND** petitioner has not satisfied the standards of N.J.A.C. 6A-12.1(e). Emergent relief cannot be granted.

LEGAL ANALYSIS

Petitioner filed an application for emergent relief and as such it is subject to the procedures and conditions of N.J.A.C. 6A:14-2.7; N.J.A.C. 6A-12.1(e); and Crowe v DeGioia, 90 N.J. 126, (1982). Petitioner is required to meet the following criteria:

1. The petitioner will suffer irreparable harm if the requested relief is not granted;
2. The legal right underlying the petitioner's claim is settled;
3. The petitioner has a likelihood of prevailing on the merits of the underlying claim; and,
4. When the equities and interests of the parties are balanced, the petitioner will suffer greater harm than the respondent will suffer if the requested relief is not granted.

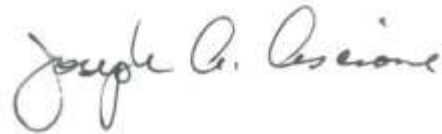
This matter is being considered under the "stay-put" standard. The "stay-put" provision holds in part "during the pendency of any proceedings . . . the child shall remain in the then-current educational placement of the child." 20 U.S.C. § 1415(j).

The June 3, 2019, de-classification resulted in a placement in the general population. Unless agreement among the parties is reached, it must remain the current placement.

I **ORDER** "general education" be the stay-put placement for S.C. The emergent application as to the placement is **DENIED**.

I **ORDER** the emergent application related to S.C.'s placement fails to satisfy emergent application criteria and is **DENIED**, and further **ORDER** the respondent's placement of S.C. in the general population of the kindergarten appropriate, pending further action in this proceeding.

This decision on application for emergency relief shall remain in effect until the issuance of the decision on the merits in this matter. The hearing having been requested by the parents, this matter is hereby returned to the Department of Education for a local resolution session, pursuant to 20 U.S.C.A. § 1415 (f)(1)(B)(i). If the parent or adult student feels that this decision is not being fully implemented with respect to program or services, this concern should be communicated in writing to the Director, Office of Special Education Programs.



September 11, 2019

DATE

JOSEPH A. ASCIONE, ALJ

Date Received at Agency

September 11, 2019

Date Mailed to Parties:

September 11, 2019

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